

FEE APPLICATION COVER SHEET

First Interim Fee Application of Lain, Faulkner & Co., P.C.

For the time period of June 1, 2023 through March 31, 2024

Capacity: Forensic Accountants for Trustee Chapter: 7

Debtor/Case: *McClain Feed Yard, Inc. et al*; Case No. 23-20084-rlj7

Retainer Received: \$0.00

Amount Previously Paid: \$0.00

Amount Requested:

Reductions (unless contested):

Fees: \$160,319.00

Non-Billed Hours: \$4,712.00

Expenses: \$650.18

Vol. Fee Reductions: \$14,010.50

Other: \$0.00

Expense Reductions: \$0.00

Total: \$160,969.18

Total Reductions: \$18,722.50

Expenses:

Copies per page (\$0.20): \$10.20

PACER: \$16.20

Meals: \$21.75

Postage/Overnight Delivery: \$80.64

Office Supplies: \$32.47

Transportation: \$488.92

Faxes per page: No Charge

Hourly Rates:

Professionals

Accountants/Staff

Highest Rates: \$500.00

\$250.00

Hours Billed: 622.50

8.90

Average: \$253.91 (with voluntary reduction)

/s/ Jason Rae

Signature

April 23, 2024

Date

Jason Rae
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Accountants for the Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

IN RE:

MCCLAIN FEED YARD, INC., et al.,¹

Debtors.

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CASE NO. 23-20084-RLJ-7

Jointly Administered

**FIRST INTERIM APPLICATION FOR ALLOWANCE OF FEES AND
EXPENSES OF LAIN, FAULKNER & CO., P.C.**

NOTICE

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 205 SOUTHEAST 5TH AVENUE, ROOM 133, AMARILLO, TEXAS, 79101-1559 BEFORE CLOSE OF BUSINESS ON MAY 16, 2024, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY. IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

¹ The Debtors in these Chapter 7 cases are: McClain Feed Yard, Inc. (Case No. 23-20084-RLJ), McClain Farms, Inc. (Case No. 23-20085-RLJ), and 7M Cattle Feeders, Inc. (Case No. 23-20086-RLJ)

TO THE HONORABLE ROBERT L. JONES, BANKRUPTCY JUDGE:

Lain, Faulkner & Co., P.C. ("LainFaulkner"), accountants to Kent Ries, Trustee ("Trustee") of the referenced Chapter 7 bankruptcy cases the "Bankruptcy Cases", files its First Interim Application for Allowance of Fees and Expenses (the "Application"), and would respectfully show the Court as follows:

I. SUMMARY

1. As the Court is well-aware, the Debtors' Chapter 7 cases are complicated and involve hundreds of millions of dollars of transactions and other transfers in connection with an alleged Ponzi-scheme that include over 100 claimants claiming in excess of \$175M of losses in connection with, in many cases, apparent passive investments in the Debtors' intertwined cattle operations. The Trustee's investigation has been significant and is ongoing, and is expected to result in considerable litigation claims in an effort to provide a meaningful return to the ultimately allowed good-faith creditor and investor claims.

2. The Trustee, with the assistance of special counsel and its accountants, has successfully pursued and settled a Chapter 5 avoidance claim for \$3,000,000.00 related to the recovery of proceeds of life insurance where the premiums were allegedly paid by fraudulent transfers from the Debtors' funds.

3. Applicant has assisted the Trustee in these efforts without payment for fees or reimbursement for expenses for almost a year. By this Application, Applicant seeks approval and payment of its fees and expenses through March 31, 2024 from the \$3,000,000.00 of proceeds realized from the avoidance claim.

4. Applicant's requests approval of fees of \$160,319.00 and expenses of \$650.18 for a total of \$160,969.18. This amount includes 17.50 of non-billed time (total amount of \$4,712.00)

and a rate reduction for certain Document Management time incurred (total amount of \$14,010.50).

II. EMPLOYMENT AND PRIOR COMPENSATION

5. The Debtors filed for relief under Chapter 7 of the United States Bankruptcy Code on April 28, 2023 (the “Petition Date”). Kent Ries was subsequently appointed and qualified to serve as the Trustee over the bankruptcy estate.

6. On June 30, 2023, the Trustee filed an application for authority to employ LainFaulkner as forensic accountants in this case (Dkt. No. 68). On July 7, 2023, this Court entered an order approving the Trustee’s employment of LainFaulkner (Dkt. No. 74).

7. LainFaulkner has not requested or received any fees or expenses for services provided to the Trustee in this case.

8. This Application covers the period of time from June 1, 2023 through March 31, 2024 (the “Application Period”). No agreement exists between LainFaulkner and any other person or entity for the sharing of compensation to be received for services rendered in connection with this case, except that such compensation will be shared among the employees of LainFaulkner.

III. ACCOUNTANT’S FEES AND EXPENSES

9. Applicant believes that the fees applied for herein are fair and reasonable in view of the time spent, the size, complexity and extent of the operation of the Estate, the risks associated with this case, and the results obtained. Applicant has attached as **Exhibit “A”**, a summary by individual, which lists the total hours billed and the applicable billing rates, by project representing total hours billed and total fees requested for each project category, and time spent by each

individual on each project and the detailed description of how each of these hours was spent on a day-to-day basis.²

10. By and through this Application, Applicant requests approval of fees in the amount of \$160,319.00 and expenses in the amount of \$650.18 for a total of \$160,969.18, for the Application Period. During the Application Period, Applicant spent a total of 631.40 hours providing the services for the Estate but is electing to non-bill the Estate for 17.50 (total amount of \$4,712.00) of those hours. In addition, Applicant is further reducing its rate on certain Document Management time incurred (total amount of \$14,010.50).

IV. CASE STATUS

11. The Trustee has spent considerable time and resources investigating the Debtors' pre-bankruptcy financial affairs, and the investigation is ongoing. Based upon his investigation thus far, the Trustee believes that the Debtors' estates may have claims against investors, lenders, and other agricultural entities.

12. In addition to various other funds, the Trustee is holding \$3,000,000.00 that constitute the proceeds of certain Chapter 5 avoidance claims investigated, pursued, and ultimately settled by the Trustee related to the alleged fraudulent transfers of Debtors' funds for the purposes of funding term life insurance for Mr. McClain.

² The engagement letter between the Trustee and Applicant provides that Applicant may adjust rates annually. Applicant implemented a rate increase for several professionals consistent with its ordinary practices. The rate for Jason Rae (the lead engagement director) was increased in 2024 from \$450.00 to \$500.00 per hour. The rate for Rick Cass increased from \$260.00 to \$275.00 per hour.

V. SUMMARY OF SERVICES RENDERED

13. The general categories of accounting and financial consulting services rendered by the Applicant are summarized as follows:

A. Case Administration – Applicant conducted planning sessions, developed work plan and facilitated case start up matters. Total Fees Requested - \$2,340.00.

B. Document Management – Applicant conferred with Trustee regarding case status and data retrieval tasks which included communicating with Kent Reis and Hudson Jobe regarding relocating files and other document related tasks, reviewing bank records and QuickBook files, reviewing electronic and hard copy records, and communicating with third parties to coordinate receipt of records. Total Fees Requested - \$26,705.00.

C. Financial Analysis - Applicant incurred time assessing information available, gathering financial information, obtaining banking records, obtaining access to the Debtor's financial system, running accounting reports and data extracts from the Debtor's system, and compiling a bank activity database. Applicant also incurred time analyzing the information and the Debtor's historical activity directed toward investigations of potential recoveries of diverted assets. Applicant's efforts in these areas are ongoing at this time as information and evidence continues to develop. Total Fees Requested - \$109,638.50.

D. Status Conferences/Meetings – Applicant met with Trustee regarding preliminary data analysis, status updates and tax issues. Applicant also conferred with counsel throughout the planning process with updates on analysis and progress. Total Fees Requested - \$6,194.00.

E. Tax Services – Applicant's work in this area has been segregated into three project codes to better track the process and document the reasonableness of the related professional fees. A brief explanation of each project code follows:

- Federal Income Tax Return. Applicant met with staff regarding accounting records and research for tax return data. Applicant also prepared and processed the Form 7004 – Application for Automatic Extension of Time to File for April 15, 2023 deadline. Total Fees Requested - \$2,905.50.

- Informational Returns. Applicant worked with Trustee to obtain pertinent financial data for 1099/W2s and information tax return reporting. Total Fees Requested - \$2,958.00.
- Other Tax Services. Applicant reviewed tax returns 2014-2017 tax returns received from Michael Johnson in order to properly report the activities of the affiliated debtors, to determine pass-thru activity from wholly or partially owned companies and to account for potential net operating losses, and researched certain relevant IRS rule and regulations. Total Fees Requested - \$8,122.00.

14. Travel Time – Applicant incurred travel time to/from Lubbock and Amarillo, which is billed at one-half of the normal billing rates. Total Fees Requested - \$1,456.00.

15. Client Time Not Billed. Applicant incurred 17.50 hours in the completion of certain of the tasks referred to above for which no compensation is sought. If billed at normal rates, the fees incurred would total \$4,712.00. Total Fees Incurred - \$4,712.00. Fees Requested - \$0.00.

VI. FIRST COLONIAL FACTORS

16. In support of this request for allowance of compensation and reimbursement of expenses, LainFaulkner respectfully directs this Court's attention to those factors generally considered by Bankruptcy Courts in awarding compensation to professionals for services performed in connection with the administration of a bankruptcy estate, as enumerated in 11 U.S.C. § 330 and developed by case law. Specifically, section 330 provides, *inter alia*, that the allowance of professional compensation should be based upon the time, nature, extent and value of the services rendered as well as consideration of the cost of comparable services rendered in a non-bankruptcy context. The controlling authority in the Fifth Circuit is *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977). In *First Colonial*, the Court of Appeals for the Fifth Circuit identified twelve factors to guide this Court's decision. Those factors as applied to the services rendered in this case by LainFaulkner for the time period covered by this Application are addressed below.

(a) **The Time and Labor Required.** Time and Labor Required. Since its appointment, Applicant has committed the necessary time and effort on behalf of the Trustee to assist him in fulfilling his fiduciary responsibilities in this proceeding. During the Application Period, a total of 631.40 hours were incurred by Applicant on behalf of the Trustee and the Estate which if billed in total at its normal rates would equal \$179,041.50. Applicant has not billed the Estate for 17.50 hours (\$4,712.00) and, is further reducing its rate on the agreed upon Document Management time incurred (\$14,010.50), bringing the total amount of fees requested to \$160,319.00.

(b) **The Novelty and Difficulty of the Questions.** The issues that Applicant encountered serving as Accountant for the Chapter 7 Trustee during this Application Period have been of a complex and specialized nature, requiring advanced skills and knowledge in bankruptcy accounting, tax reporting and financial analysis, in order to obtain results useful to the Trustee and beneficial to the Estate.

(c) **The Skill Requisite to Perform the Service.** Applicant's firm has members, including those who have performed services on behalf of the Trustee, who are specialized in various facets of financial analysis, bankruptcy accounting and tax reporting. Due to their expertise and skill in these specialized areas, Applicant believes far more time would have been expended by less experienced personnel, with considerably less desirable results. The array of accounting, financial analysis and specialized reporting considerations presented in this proceeding and the prompt and skillful action taken with regard to such problems by Applicant required a very high degree of expertise and experience. Applicant's abilities in this area are well known and enable it to represent

debtors and trustees effectively and efficiently in bankruptcy proceedings such as the instant one.

(d) The Preclusion of Other Employment Due to Acceptance of the Case.

Applicant is unable to precisely estimate the extent to which it has been precluded from accepting other employment by reason of its employment as Accountant for the Chapter 7 Trustee. Applicant has, however, found it necessary to reschedule and, in some instances forego, work on other matters because of the concentrated efforts necessary to respond to the needs of the Trustee.

(e) The Customary Fee. The hourly rates sought herein are commensurate with the rates charged and approved in other bankruptcy proceedings pending in the Northern District of Texas. The hourly rates charged by the professionals and staff of LainFaulkner who worked on this case are as follows:

(i) Jason Rae, CPA/Managing Director (\$500.00 per hour), has over 27 years of experience in industry and public practice/23 years in bankruptcy and forensic accounting matters.

(ii) Dean Bielitz, CPA/Director (\$440.00 per hour) has over 30 years of experience in the preparation of Corporate, Partnership, MLP, Individual, S-Corporate and Trust tax returns.

(iii) Ben Beckelman, CPA/Manager (\$325.00 per hour) has over 30 years of experience in providing accounting, consulting and tax services.

(iv) Ray Behgam, IT Specialists (\$300.00 per hour), has over 28 years as a Systems and Network Administrator.

(v) Misty Berumen, Accounting Professional (\$285.00 per hour), has over 20 years of experience providing forensic analysis and business valuation services.

(vi) Aniza Rowe, Accounting Professional (\$280.00 per hour), has over 30 years of experience in public accounting, the past 23 years focused on bankruptcy. Ms. Rowe is also a Certified QuickBooks ProAdvisor.

(vii) Rick Cass, Accounting Professional (\$275.00 per hour), has over 23 years of experience in public accounting, the past 22 years focused on bankruptcy, litigation and forensic services.

(viii) Laura Paz-Sanchez, Staff Accountant (\$250.00 per hour) has over 10 years of experience in assisting with the preparation of all federal and state tax reporting.

(ix) Karla Wortham, Accounting Professional (\$250.00 per hour), has over 20 years of accounting experience focusing on bankruptcy, receiverships, litigation and forensic services.

(x) Scott Reese, Accounting Professional (\$235.00 per hour), has over 20 years of experience focusing on bankruptcy, reconstruction accounting and litigation support.

(xi) Brenda Puente, Staff Accountant (\$195.00 per hour) has over five years of accounting experience in bookkeeping, payroll and personal/corporate taxes.

(f) **Whether the Fee is Fixed or Contingent.** LainFaulkner's fee is fixed insofar as monies exist in the estate from which to pay such fees. Payment of LainFaulkner's fees, however, is subject to Court approval and the requirements of the Bankruptcy Code and relevant case law.

(g) **Time Limitations Imposed by the Client or Other Circumstances.** Applicant believes that its role in this case has, to date, been handled in an expeditious manner, given the factual circumstances involved and the complex issues confronted. Applicant further believes that no undue delays have occurred and that it has proceeded expeditiously and efficiently to the benefit of the Trustee, the creditors and all other parties-in-interest.

(h) **The Amount Involved and the Results Obtained.** Applicant's work and effort in assisting the Trustee in this case has been both necessary and beneficial to the

Estate and administration of the case. The Applicant's efforts and associated benefits to the Estate include the following:

- Continuing to develop a cash transaction database for three separate bankruptcy entities from six primary bank accounts encompassing disbursements in excess of 3.7 billion for both inter-company and third party transactions.
- Assisting Trustee in meeting his due diligence obligation regarding the analysis of potential recoveries.

(i) **The Experience, Reputation and Ability of the Accountants.** Applicant submits that its accountants and other staff personnel are respected for their ability in accounting and financial consulting services, particularly in regard to bankruptcy situations. Applicants have been retained by numerous debtors-in-possession, trustees, secured creditors and creditors committees in various Chapter 11 and Chapter 7 proceedings and have received favorable comments from the Courts and other parties-in-interest.

(j) **The Undesirability of the Case.** Applicant does not believe that this is or should be a significant factor in the consideration of this Application. Indeed, Applicant does not believe that this case was undesirable.

(k) **The Nature and Length of the Professional Relationship with the Client.** Prior to Applicant's engagement by the Trustee, Applicant had not performed services for the Debtor or any related entities. Applicant has performed accounting services in numerous other bankruptcies, some of which also involved certain creditors and s involved in this case.

(1) **Award in Similar Cases.** LainFaulkner believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases pending in this District.

VII. APPLICANT'S REPRESENTATIONS

17. Applicant does not hold nor has it represented at any time during this engagement any interest adverse to the Estate, and has been at all times a disinterested party. Applicant has made no agreement for the sharing of compensation for services rendered in or in connection with this case with any other person, other than the individual members of the Applicant's firm.

VIII. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, LainFaulkner requests that this Court enter an order approving LainFaulkner's compensation of \$160,969.18 for fees and expenses for the period of time from June 1, 2023 to March 31, 2024 and granting LainFaulkner such other and further relief, general or special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

By: /s/ Jason Rae

Jason Rae

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ACCOUNTANTS FOR CHAPTER 7 TRUSTEE

PROFESSIONAL CERTIFICATION

I hereby certify (a) that I am the professional with responsibility to verify compliance with the Guidelines for Compensation and Expense Reimbursement of Professionals as promulgated in the United States Bankruptcy Court for the Northern District of Texas (“Guidelines”); (b) I have read the Application; (c) to the best of my knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with the Guidelines; and (d) the compensation and expense reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by LainFaulkner and generally accepted by LainFaulkner’s clients.

/s/ Jason Rae
Jason Rae